# STATE OF MICHIGAN

# COURT OF APPEALS

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| HAYES LEMMERZ INTERNATIONAL TECHNICAL CENTER, INC., | UNPUBLISHED May 3, 2005 |
| Plaintiff-Appellant, | |
| v | No. 250707 Oakland Circuit Court |
| JARED HARTZ, | LC No. 2001-030814-CK |
| Defendant-Appellee. | |

Before: Griffin, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's decision to set aside a default and its subsequent dismissal of plaintiff's claim for breach of contract or unjust enrichment after the close of plaintiff's proofs in this bench trial. We affirm.

This appeal arose from a suit to recover money plaintiff spent on defendant's educational expenses while defendant was an undergraduate participant in plaintiff's co-operative education (co-op) program. Plaintiff asserts that, in return for his educational expenses, defendant agreed to work for plaintiff full-time for a period of at least two years after graduation. Plaintiff alleges that defendant broke that agreement when he quit working at the CMI Tech Center only a few months after graduation.

Plaintiff filed its witness and exhibits list on December 5, 2001, the same day that it filed for bankruptcy, which caused the trial court to stay the proceedings. In August 2002, a pretrial settlement conference was scheduled and noticed for October 4, 2002. On September 13, 2002, defendant's then attorney was sent a letter from the Attorney Grievance Board notifying him that his license to practice law would be revoked on October 5, 2002. No one appeared for defendant at the October 4 settlement conference, and the trial court entered a default for plaintiff in the amount of $67,000. The court also sanctioned defendant $1,000 for the failure to appear.

When defendant learned of the default, he retained new counsel, who filed an appearance in December 2002 and began the effort to have the default set aside under MCR 2.603 and MCR 2.612. In support of this effort, defendant filed an affidavit stating that he contacted his previous attorney periodically to check on the status of the case and that he had always been told that the case remained inactive due to plaintiff's bankruptcy. Defendant also submitted a copy of the notice he received about his attorney's disbarment, which was dated October 31, 2002,

postmarked November 8, 2002, and received on November 17, 2002.[1] At the hearing on defendant's motion to set aside the default, plaintiff's co-counsel testified that he had spoken with defendant's prior attorney before the settlement conference and that defense counsel had indicated that he would be at the October 2002 conference. The trial court then set aside the default and later granted defendant's motion to shift responsibility for paying the $1,000 sanction for non-appearance from defendant to his prior attorney.

Plaintiff called one witness at trial, Diane Zekind. Zekind testified that she was vice president of the CMI Tech Center from 1995 to February 1999. She testified that defendant was given a copy of plaintiff's policy on the co-op program with his job offer and that this policy included a provision that CMI would offer full-time employment to students who had completed all of their program requirements and that the period of employment was for a minimum of two years. Zekind also testified that a note in the policy indicated that prospective employees were expected to accept employment if they met all the criteria. Zekind further explained that plaintiff initiated a policy change in August 1996 because a number of plaintiff's employees who were receiving tuition reimbursement were leaving plaintiff's employ after obtaining their degrees. Zekind testified that the document notifying employees of the change had an attached signature page for employees to sign if they agreed to participate. Plaintiff stipulated that it did not have a signed agreement from defendant agreeing to the 1996 policy change, and Zekind admitted that she did not know whether defendant ever received a copy of it.

Zekind also admitted that there was nothing in the job offer that notified employees of any repayment obligation. However, she did opine that the following provision served to bind the employees in the co-op program:

> It is the intention of CMI to offer students who complete all program requirements full time employment, consistent with the "at will" policy and current economic conditions, at a CMI facility for a minimum of two years.

Zekind conceded that the quoted provision does not speak of a repayment obligation. She further admitted that she did not know of any document that specifies that defendant must repay the expenses plaintiff spent on his education if defendant did not remain with plaintiff for at least two years.

Plaintiff first argues that the trial court erred in setting aside the default. We disagree. We review a trial court's decision to set aside a default for an abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). Defendant's motion to set aside the default was predicated on MCR 2.603(D)(3), which provides that a "court may set aside an entry of default and a judgment by default in accordance with MCR 2.612." MCR 2.612(C) provides, in relevant part, as follows:

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[1] Defendant points out that the notice his prior attorney sent him was sent to an incorrect address.

> (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.
>
> * * *
>
> (f) Any other reason justifying relief from the operation of the judgment.
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> (2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation.

In this case, defendant argued, and the trial court agreed, that defendant's prior attorney abandoned him before the settlement conference. In *AMCO Builders & Developers, Inc v Team ACE Joint Venture*, 469 Mich 90, 98; 666 NW2d 623 (2003), our Supreme Court observed that abandonment by counsel is good cause for setting aside a default. Accordingly, the default was properly set aside. MCR 2.612(C)(1)(f).[2]

Plaintiff next argues the trial court erred in dismissing plaintiff's breach of contract claim. We disagree. "The involuntary dismissal of an action is appropriate where the trial court, when sitting as the finder of fact, is satisfied at the close of the plaintiff's evidence that 'on the facts and the law the plaintiff has shown no right to relief.' MCR 2.504(B)(2). . . . [W]e review the ultimate determination de novo and review for clear error the findings of fact supporting that determination." *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995).

The evidence adduced below established that plaintiff only included two contingencies in its offer to defendant. Specifically, the offer provided as follows:

> Our offer is contingent upon your successful completion of graduation requirements and your ability to provide Hayes Lemmerz International proper documentation to establish your identity and eligibility for employment . . . .

On the next page of the agreement, defendant's signature appears under the following text:

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[2] We reject plaintiff's argument that the default should not be set aside because defendant cited MCR 2.612(C)(1)(a) rather than (C)(1)(f) as grounds for setting aside the default. "This Court will not disturb the decision of the lower court, which reached the right conclusion, regardless of the reasons it cites for reaching that conclusion." *Templin v Twp of Nottawa*, 362 Mich 257, 261; 106 NW2d 825 (1961).

> I hereby accept the appointment as Staff Engineer in the Engineering Department of the Powertrain Business Unit, at Hayes Lemmerz International, Inc., together with the associated terms and conditions outlined in the above letter dated June 15, 2000. I plan to commence work on October 2, 2000 [handwritten date]. I understand that I or Hayes Lemmerz International can terminate my employment, with or without cause, and with or without notice at any time. In addition, I understand that Hayes Lemmerz International continues to reserve the right to change or discontinue benefit and compensation programs at any time.

Based on this language, we conclude the trial court did not err in finding that defendant was not obligated to work for plaintiff for any length of time after accepting employment and was not under any obligation to repay plaintiff for his education if he left its employ before the two-year period had run. Thus, plaintiff's breach of contract claim was properly dismissed.

Finally, plaintiff argues that the trial court erred in dismissing plaintiff's unjust enrichment claim. Again, we disagree.

> The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. In such instances, the law operates to imply a contract in order to prevent unjust enrichment. However, a contract will be implied only if there is no express contract covering the same subject matter. [*Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993) (citations omitted).]

In this case, plaintiff extended a written offer of employment to defendant, which defendant accepted. This contract included no mention of any duty by defendant to repay plaintiff or continue working for a specified period. To the contrary, the contract gave both parties the option to "terminate [defendant's] . . . employment, with or without cause, and with or without notice at any time." Therefore, the trial court did not err in concluding that plaintiff's unjust enrichment claim was precluded by the express contract between the parties.

Affirmed.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra